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# CORPORATE OFFICER LIABILITY FOR FEDERAL ENVIRONMENTAL STATUTE VIOLATIONS

*Andrew M. Goldberg\**

## I. INTRODUCTION

Criminal prosecution of corporate officers for violations of environmental statutes increased tremendously in the 1980s.<sup>1</sup> During fiscal year 1985, for example, corporate officers were sentenced to a total of less than six years in prison and were fined \$560,000 for criminal violations of environmental statutes.<sup>2</sup> In fiscal year 1988, however, corporate officers convicted of environmental crimes received sentences totalling thirty-nine years of imprisonment and approximately seven million dollars in fines.<sup>3</sup>

Much of this increase has been the direct result of the creation in 1981 of a new Office of Criminal Enforcement within the Environmental Protection Agency (EPA)<sup>4</sup> and a special Environmental Crimes Unit within the Land and Natural Resources Division of the Department of Justice.<sup>5</sup> These divisions were created specifically to investigate and prosecute environmental criminals.<sup>6</sup> A former Assistant Attorney General in charge of the Land and Natural Resources Division of the Department of Justice has said that it is the continu-

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\* Articles Editor, 1990-1991, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW.

<sup>1</sup> See *Civil and Criminal Liability of Corporate Officers Under Federal Environmental Laws*, 20 Env't Rep. (BNA) No. 6, at 337 (June 9, 1989).

<sup>2</sup> *Id.* (citing Memorandum from Peggy Hutchins, Environmental Crimes Section, to Joseph Block, Chief Environmental Crimes Section (May 5, 1989)).

<sup>3</sup> *Id.* These statistics include sentences for some non-corporate officer defendants.

<sup>4</sup> See *The Federal Perspective on Environmental Criminal Enforcement: How to Remain on the Civil Side*, 17 Env'tl. L. Rep. (Env'tl. L. Inst.) No. 12, at 10,479 (Dec. 1987).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

ing policy of the Justice Department to prosecute the highest-ranking responsible corporate officers.<sup>7</sup>

Most environmental statutes are what the United States Supreme Court has labeled public welfare statutes.<sup>8</sup> The purpose of public welfare statutes is to protect the general public from dangers that can be prevented and controlled.<sup>9</sup> The fifth amendment due process clause usually requires that criminal intent be a necessary element for conviction of a crime.<sup>10</sup> Most crimes, therefore, require criminal intent,<sup>11</sup> but the Supreme Court has stated that the absence of a knowledge requirement in public welfare statutes does not violate a defendant's due process rights.<sup>12</sup> Courts must construe the legislative intent behind a given public welfare statute to determine what element of knowledge, if any, must be proven to convict an individual defendant for violating a public welfare statute.<sup>13</sup>

Although most environmental public welfare statutes contain a knowledge requirement, some impose a strict-liability standard instead.<sup>14</sup> Regardless of whether a statute imposes a knowledge requirement or a strict-liability standard, the government's burden of proof does not vary greatly because a jury can infer knowledge from the surrounding circumstances.<sup>15</sup> Courts generally have imposed a high duty of care on corporate officers while holding that knowledge of statutory violations can be inferred from circumstantial evidence.<sup>16</sup>

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<sup>7</sup> *Id.* at 10,480. "It has been, and will continue to be, Justice Department policy to conduct environmental criminal investigations with an eye toward identifying, prosecuting, and convicting the highest ranking, truly responsible corporate officials." *Id.*

<sup>8</sup> See Comment, *Element Analysis Applied to Environmental Crimes: What Did They Know and When Did They Know It?*, 16 B.C. ENVTL. AFF. L. REV. 53, 61 (1988).

<sup>9</sup> See *United States v. Dotterweich*, 320 U.S. 277, 281 (1943) (involved the Federal Food, Drug, and Cosmetic Act, which prohibits the sale of misbranded or adulterated drugs); *United States v. Balint*, 258 U.S. 250, 252 (1922) (involved a violation of the Narcotic Act, which regulated the sale of certain drugs).

<sup>10</sup> See *Balint*, 258 U.S. at 252; Comment, *supra* note 8, at 61 (citing R. PERKINS, PERKINS ON CRIMINAL LAW 785 n.11 (2d ed. 1969)). See generally *Morissette v. United States*, 342 U.S. 246 (1952).

<sup>11</sup> *Morissette v. United States*, 342 U.S. 246, 250-52 (1952); *Reynolds v. United States*, 98 U.S. 145, 167 (1878); *United States v. Crimmins*, 123 F.2d 271, 272 (2d Cir. 1941).

<sup>12</sup> See *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 67-70 (1910); *infra* note 28.

<sup>13</sup> *Balint*, 258 U.S. at 251-52.

<sup>14</sup> See Comment, *supra* note 8, at 60-61. Environmental statutes that impose strict liability include the Federal Hazardous Substances Act, 15 U.S.C. § 1264 (1988); Rivers and Harbors Appropriations Act, 33 U.S.C. § 411 (1988); Federal Water Pollution Control Act, 33 U.S.C. § 1319(c) (1988) (liability for "negligent" violations).

<sup>15</sup> See *Liparota v. United States*, 471 U.S. 419, 433-34 (1985); *United States v. Hayes Int'l Corp.*, 786 F.2d 1499, 1505 (11th Cir. 1986); *United States v. Johnson & Towers, Inc.*, 741 F.2d 662, 669 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985).

<sup>16</sup> See *Hayes*, 786 F.2d at 1504-05 (presumption that hazardous waste transporters are

This Comment examines the situation faced by today's high-level corporate officers in light of the Supreme Court's and the Circuit Courts' interpretations of the knowledge requirements in public welfare statutes. This Comment argues that, while it is not impossible, it is unlikely that any high-level officer in a large corporation could be convicted for criminal violations of environmental public welfare statutes of which they had no knowledge.

Section II of this Comment reviews the history of criminal statutes and their relationship to requirements of due process of law.<sup>17</sup> Section III discusses the origins of both strict-liability public welfare statutes and public welfare statutes with knowledge requirements.<sup>18</sup> Section IV examines the application of public welfare statutes to corporate officers.<sup>19</sup> Finally, in Section V this Comment suggests that the trend in corporate officer convictions for criminal violations of environmental public welfare statutes should not lead to similar convictions of high-level officers in large corporations.<sup>20</sup>

## II. CRIMINAL STATUTES AND DUE PROCESS

The general rule at common law was that the prosecution must prove scienter, or knowledge, on the part of the defendant in order to obtain a criminal conviction.<sup>21</sup> The states adopted this rule into statutory crimes,<sup>22</sup> and state courts assumed that a scienter element was implied in criminal statutes that were silent on the subject.<sup>23</sup> This rule has been modified, however, with respect to statutes whose

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aware of waste disposal procedures); *Johnson & Towers*, 741 F.2d at 670 (jury may infer knowledge of permit requirements to corporate officers holding "requisite responsible positions" with corporate defendant).

<sup>17</sup> See *infra* notes 21-34 and accompanying text.

<sup>18</sup> See *infra* notes 35-119 and accompanying text.

<sup>19</sup> See *infra* notes 120-75 and accompanying text.

<sup>20</sup> See *infra* notes 176-204 and accompanying text.

<sup>21</sup> See *Morissette v. United States*, 342 U.S. 246, 250-51 (1952); *United States v. Balint*, 258 U.S. 250, 251 (1922). The exceptions to this rule include sex offenses, such as statutory rape, in which the defendant's reasonable belief that the victim had reached the age of consent was irrelevant. *Morissette*, 342 U.S. at 252 n.8. Other exceptions were offenses of negligence, such as involuntary manslaughter, and a wide range of other crimes that arose from an omission of duty. *Id.* Exceptions also included felony murder and adultery. *United States v. Crimmins*, 123 F.2d 271, 273 (2d Cir. 1941). Much of the reasoning behind the exceptions to the general rule was that such conduct is independently immoral or unlawful, and the actor should realize that the element of the crime may exist. *Id.*

<sup>22</sup> *Morissette*, 342 U.S. at 252; *Balint*, 258 U.S. at 251.

<sup>23</sup> *Morissette*, 342 U.S. at 252; *Balint*, 258 U.S. at 251-52.

purpose would be obstructed by the scienter requirement.<sup>24</sup> These statutes are commonly referred to as public welfare statutes<sup>25</sup> because the health, safety, and welfare of the public justifies conviction without any criminal intent.<sup>26</sup> In *Shevlin-Carpenter Co. v. Minnesota*,<sup>27</sup> the Supreme Court determined that public welfare statutes not containing scienter requirements do not violate due process.<sup>28</sup>

The Supreme Court stated in *Nebbia v. New York*<sup>29</sup> that the guarantee of due process "demands only that the law shall not be unreasonable, arbitrary or capricious."<sup>30</sup> Although public welfare statutes need not contain a scienter requirement, those statutes containing the requirement<sup>31</sup> are subject to the same standards of proof as any other criminal statute.<sup>32</sup> The due process clause demands proof beyond a reasonable doubt of every fact necessary to

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<sup>24</sup> See *Balint*, 258 U.S. at 252.

<sup>25</sup> Comment, *supra* note 8, at 61.

<sup>26</sup> See *id.*

<sup>27</sup> 218 U.S. 57 (1910).

<sup>28</sup> See *id.* at 67-70. In *Shevlin-Carpenter*, the plaintiffs had violated a state law that forbade the removal, without a valid permit, of timber from state lands. *Id.* at 62-63. The Court stated that "public policy may require that in the prohibition or punishment of particular acts it may be provided that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance." *Id.* at 70.

<sup>29</sup> 291 U.S. 502 (1934).

<sup>30</sup> *Id.* at 525. The Court fully stated:

The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts.

*Id.* (footnotes omitted).

<sup>31</sup> See *infra* notes 76-119 and accompanying text. The word "knowingly" is commonly used in statutes, including public welfare statutes, as the scienter requirement. *Id.* In *United States v. Byrd*, the Court of Appeals for the Second Circuit approved of the following definition of "knowingly" given by the trial court in its jury instructions:

Now, the word "knowingly," as used in the indictment, means that the act or acts which were committed by the defendant were done voluntarily and purposely, not because of a mistake or inadvertence or in good faith.

Now, the knowledge may be proven by the defendant's conduct and by all the facts and circumstances surrounding the case.

No person can intentionally avoid knowledge by closing his eyes to facts which prompt him to investigate . . . .

352 F.2d 570, 572 n.1 (2d Cir. 1965).

<sup>32</sup> See *Liparota v. United States*, 471 U.S. 419, 434 (1985).

convict a defendant.<sup>33</sup> This includes proof of criminal intent when it is an element of a crime.<sup>34</sup>

### III. HISTORY OF PUBLIC WELFARE STATUTES

#### A. *Strict Liability Public Welfare Statutes*

Although public welfare statutes do not require a scienter element, courts have had to determine what statutes may qualify for public welfare status. The Supreme Court applied the public welfare exception that it discussed in *Shevlin-Carpenter*<sup>35</sup> in *United States v. Dotterweich*.<sup>36</sup> In *Dotterweich*, the federal government charged the president and general manager of a pharmaceutical company with violating the Federal Food, Drug, and Cosmetic Act<sup>37</sup> by shipping misbranded and adulterated drugs in interstate commerce.<sup>38</sup> Although the shipment was a mistake, the Court stated that it is in the public interest that the burden of such action should rest on the person who acts in relation to a public danger.<sup>39</sup> The Court noted that a conviction without any criminal intent on the part of the wrongdoer might be harsh in some cases, but that the hardship should rest with those who have the opportunity to prevent the harm, rather than with the innocent public.<sup>40</sup>

The Court further clarified the types of statutes that would be deemed public welfare statutes in *Morissette v. United States*.<sup>41</sup> It

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<sup>33</sup> *In re Winship*, 397 U.S. 358, 364 (1970). The Court also stated in support of this contention:

[U]se of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

*Id.* at 364; *see also* *Gregory v. City of Chicago*, 394 U.S. 111, 112 (1969). "[C]onvictions so totally devoid of evidentiary support violate due process." *Id.*

<sup>34</sup> *Byrd*, 352 F.2d at 572-74.

<sup>35</sup> 218 U.S. 57, 67-70 (1910); *see supra* note 28.

<sup>36</sup> 320 U.S. 277 (1943).

<sup>37</sup> 21 U.S.C. §§ 301-393 (1988). Section 331(a) prohibits: "The introduction or delivery for introduction into interstate commerce of any . . . drug . . . that is adulterated or misbranded." *Id.* § 331(a). At the time the case was decided, § 333(a) provided that any person who violated a provision of section 331 was guilty of a misdemeanor. *Id.* § 333(a).

<sup>38</sup> *Dotterweich*, 320 U.S. at 278.

<sup>39</sup> *Id.* at 281.

<sup>40</sup> *See id.* at 284-85.

<sup>41</sup> 342 U.S. 246 (1952).

stated that certain statutes implicitly require a showing of intent in order to uphold a violation, regardless of whether the statutes explicitly demand a showing of intent.<sup>42</sup> Under *Morissette*, the distinguishing feature of a statute that determines whether proof of intent should be required is derivation of the statute from the common law.<sup>43</sup> If the statute derives from the common law, then intent should be required.<sup>44</sup> If it does not derive from the common law, it is a public welfare statute and intent is not required when none is mentioned in the statute.<sup>45</sup>

The United States Court of Appeals for the Eighth Circuit summarized the *Morissette* analysis and existing case law in *Holdridge v. United States*.<sup>46</sup> In so doing, the court identified a number of factors for defining proper public welfare statutes. According to the *Holdridge* court, if a criminal statute imposes strict liability, involves a policy matter, imposes a reasonable standard and a small penalty, does not derive from the common law, has a supporting congressional purpose, and if conviction does not gravely besmirch one's reputation, then the statute does not require intent and does not violate the due process clause.<sup>47</sup>

The Supreme Court applied this analysis in *United States v. Freed*.<sup>48</sup> The Court held that the defendants in *Freed* violated the National Firearms Act<sup>49</sup> because they possessed unregistered hand grenades.<sup>50</sup> The Court viewed the case as similar to *Dotterweich*<sup>51</sup> and concluded that the Act as written required neither intent nor knowledge that the hand grenades were unregistered.<sup>52</sup> The Court noted that the Act was a regulatory measure in the interest of public safety and therefore did not require the elements of knowledge or intent to uphold a conviction.<sup>53</sup>

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<sup>42</sup> *Id.* at 259-63.

<sup>43</sup> *See id.* at 255-57.

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*

<sup>46</sup> 282 F.2d 302, 310 (8th Cir. 1960).

<sup>47</sup> *Id.*

<sup>48</sup> 401 U.S. 601, 607-08 (1971).

<sup>49</sup> 26 U.S.C. §§ 5801-5872 (1988). The National Firearms Act states: "It shall be unlawful for any person to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record." *Id.* § 5861(d).

<sup>50</sup> *Freed*, 401 U.S. at 607-10.

<sup>51</sup> *Id.* at 609; *see supra* notes 36-40 and accompanying text. The Court stated that the National Firearms Act is a regulatory measure in the interest of the public safety. The Court added that one should not be surprised to learn that the possession of hand grenades is illegal. *Freed*, 401 U.S. at 609.

<sup>52</sup> *Id.* at 607.

<sup>53</sup> *See id.*

In contrast, the Court of Appeals for the Sixth Circuit decided in *United States v. Wulff*<sup>54</sup> that a conviction under the Migratory Bird Treaty Act (MBTA)<sup>55</sup> violated the defendant's due process rights because the statute lacked a scienter requirement.<sup>56</sup> The court held that an element of scienter can be read into a statute lacking such a requirement only when that statute is derived from the common law.<sup>57</sup> The MBTA, however, was not derived from the common law and contained a severe felony provision.<sup>58</sup> Because the *Wulff* court could not read a scienter requirement into the statute, it analyzed the constitutionality of the statute.

The Court of Appeals stated that, according to *Holdridge*, the due process clause would not be violated when the penalty is not severe, and the conviction does not gravely besmirch a defendant's reputation.<sup>59</sup> The court concluded that the penalties under the MBTA were not small and that a felony conviction does irreparable damage to one's reputation.<sup>60</sup> A felony conviction also results in the loss of one's rights to vote, sit on a jury, and possess a firearm.<sup>61</sup> Due to these factors, the court determined that the statute failed to meet the criteria of the *Holdridge* test and that imposition of the felony penalty would violate due process.<sup>62</sup> The court determined, therefore, that the MBTA is not a public welfare statute because that term is used to identify statutes that are constitutional whether or not proof of knowledge is required. Congress, therefore, would have to amend the statute to include some degree of scienter in order for the statute to satisfy the requirements of the Constitution.<sup>63</sup>

In *United States v. Engler*, the Court of Appeals for the Third Circuit disagreed with the *Wulff* court's conclusion.<sup>64</sup> The defendants in *Engler*, like the defendant in *Wulff*, were charged with violating the MBTA.<sup>65</sup> Unlike the court in *Wulff*, however, the *Engler* court

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<sup>54</sup> 758 F.2d 1121 (6th Cir. 1985).

<sup>55</sup> 16 U.S.C. §§ 703-712 (1988). Before 1986, § 707(b)(2) provided: "Whoever, in violation of this subchapter, shall— . . . sell, offer for sale, barter or offer to barter, any migratory bird shall be guilty of a felony and shall be fined not more than \$2,000 or imprisoned not more than two years, or both." *Id.* § 707(b)(2). In 1986, Congress substituted "shall knowingly" for "shall" in the introductory provisions of the statute. *Id.* § 707(b).

<sup>56</sup> *Wulff*, 758 F.2d at 1125.

<sup>57</sup> *Id.* at 1124.

<sup>58</sup> *Id.* at 1122.

<sup>59</sup> *Id.* at 1125.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 1123, 1125.

<sup>62</sup> *Id.* at 1125.

<sup>63</sup> *Id.*; see *supra* note 55.

<sup>64</sup> 806 F.2d 425, 433 (3d Cir. 1986), *cert. denied*, 481 U.S. 1019 (1987).

<sup>65</sup> *Id.* at 426; see *supra* note 55.



concluded that the statute did not violate the defendants' due process rights.<sup>66</sup> Instead, the court decided that, because there were no substantial differences between the misdemeanor and felony penalties, the felony provisions did not violate due process.<sup>67</sup>

The court in *Engler* refused to accept the district court's opinion that the differences between a five hundred dollar misdemeanor fine and a two thousand dollar felony fine, or a six-month misdemeanor sentence and a two-year felony sentence, compelled the conclusion that one's reputation would be harmed under the latter penalties but not the former.<sup>68</sup> Furthermore, the court cited numerous other cases applying strict-criminal-liability statutes that carried penalties equal to or more severe than the one at issue, and that had been held constitutional by the Supreme Court.<sup>69</sup>

In *United States v. Williams*,<sup>70</sup> the Court of Appeals for the Sixth Circuit maintained the approach it had taken in *Wulff* and again required that a statute contain a scienter requirement.<sup>71</sup> In *Williams*, the court decided that the statutory penalties for transferring a firearm that had not been registered in accordance with the provisions of the National Firearms Act<sup>72</sup> violated the due process clause if the statute did not contain a knowledge requirement.<sup>73</sup> The penalties for such a violation included a possible ten-year prison sentence and a ten thousand dollar fine.<sup>74</sup> The court required that a conviction must rest on the showing of knowledge that a "firearm," as defined in the statute, was being transferred.<sup>75</sup>

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<sup>66</sup> *Id.* at 436.

<sup>67</sup> *Id.* at 434.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 435. In *United States v. Freed*, the Supreme Court upheld a statute prohibiting the possession of unregistered firearms, which imposed fines up to \$10,000 and/or imprisonment up to ten years. 401 U.S. 601 (1971). In *United States v. Dotterweich*, the Court upheld a statute prohibiting the shipment of misbranded or adulterated drugs, which imposed fines up to \$1000 and/or imprisonment up to one year for a first offense. 320 U.S. 277 (1943). And in *Shevlin-Carpenter Co. v. Minnesota*, the Court upheld a statute prohibiting the cutting of timber on state lands without a valid permit, which imposed fines up to \$1000 and/or imprisonment up to two years. 218 U.S. 57 (1910).

<sup>70</sup> 872 F.2d 773 (6th Cir. 1989).

<sup>71</sup> *Id.* at 777.

<sup>72</sup> 26 U.S.C. §§ 5801-5872. Section 5861(e) provides that it shall be unlawful for any person "to transfer a firearm in violation of the provisions of this chapter." *Id.* § 5861(e). Section 5841(b) provides: "Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor." *Id.* § 5841(b).

<sup>73</sup> See *Williams*, 872 F.2d at 777.

<sup>74</sup> *Id.*; see 26 U.S.C. § 5871.

<sup>75</sup> *Id.* at 777.

*B. Public Welfare Statutes with Scienter Requirements*

Unlike the statutes just discussed, there are many public welfare statutes that contain explicit scienter requirements. There has been much controversy, however, over what type of knowledge must be proved for a conviction under these statutes. In *United States v. International Minerals & Chemical Corp.*,<sup>76</sup> the Supreme Court interpreted a statute that empowered the Interstate Commerce Commission to formulate regulations for the safe transportation of corrosive liquids.<sup>77</sup> The statute stated that whoever "knowingly violates any such regulation" shall be fined or imprisoned.<sup>78</sup> The Court imputed knowledge to the defendant by deciding that knowledge pertained only to the substances and not to the regulation itself.<sup>79</sup> In other words, knowledge meant knowledge of the substances only and not of the regulations. The Court stated that such substances, sulfuric and hydrofluosilicic acid that had been shipped through interstate commerce, are presumably regulated.<sup>80</sup>

The Court reviewed the legislative history of the regulation and determined that Congress did not intend to discard the principle that ignorance of the law is no excuse when it passed the regulation.<sup>81</sup> In 1960, the Senate had approved an amendment that deleted "knowingly" and substituted the language "being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles."<sup>82</sup> The House of Representatives refused to agree, however, and stated that its version, which ultimately prevailed, would retain the existing language.<sup>83</sup>

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<sup>76</sup> 402 U.S. 558 (1971).

<sup>77</sup> 18 U.S.C. § 834(f) (1970) (repealed 1979).

<sup>78</sup> Title 18 of the United States Code provided: "Whoever knowingly violates any such regulation shall be fined not more than \$1000 or imprisoned not more than one year, or both . . . ." *Id.* Title 18 also provided:

The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles, including radioactive materials . . . flammable liquids . . . and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land . . . .

*Id.* § 834(a).

<sup>79</sup> *International Minerals*, 402 U.S. at 560-63.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 563. *But see* *United States v. Bass*, 404 U.S. 336, 347 (1971) (Court stated that when ambiguity exists, criminal statutes should be resolved in favor of leniency).

<sup>82</sup> *International Minerals*, 402 U.S. at 562 (quoting H.R. REP. NO. 1975, 86th Cong., 2d Sess. 10-11 (1960)) [hereinafter H.R. REP.].

<sup>83</sup> *Id.* (citing H.R. REP., *supra* note 82, at 2).

The Court, analyzing the House of Representatives' resistance to the Senate amendments, implied that the House may have been afraid that the Senate version would result unintentionally in strict liability because virtually anyone who was in the business of shipping dangerous materials would be deemed to know of the regulations.<sup>84</sup> The Court refused to conclude, however, that the House was endorsing an ignorance of the law excuse in rejecting strict liability.<sup>85</sup> Instead, the Court concluded that the legislative history was unclear and held that knowledge of facts was required, but not knowledge of law.<sup>86</sup> The Court concluded that a person possessing or dealing with dangerous products or waste materials must be presumed to be aware of any regulations.<sup>87</sup>

Justice Stewart, joined by two other justices,<sup>88</sup> wrote a strong dissent to Justice Douglas's majority opinion.<sup>89</sup> Stewart stated that other federal courts have decided this exact issue by holding that the statute means exactly what it says.<sup>90</sup> Furthermore, Stewart examined the legislative history of the statute and noted that Congress almost modified the statute because the statute required knowledge of the regulations.<sup>91</sup> The statute was not

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<sup>84</sup> *Id.* at 563 (citing H.R. REP., *supra* note 82, at 2).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* The Court stated that a "person thinking in good faith that he was shipping distilled water when in fact he was shipping some dangerous acid would not be covered." *Id.* at 563-64. In further support of why knowledge of facts is important, the Court stated that:

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

*Id.* at 564 (quoting *Morissette v. United States*, 342 U.S. 246, 250 (1952)).

<sup>87</sup> *Id.* at 565. The Court compared this case with *Balint* and *Freed* because dangerous products or waste materials were involved. In such situations, the probability of regulation is so large that anyone who knows that they are dealing with such substances must be presumed to be aware of the regulation. *Id.*

<sup>88</sup> Justices Harlan and Brennan joined Justice Stewart's dissenting opinion. *Id.* at 565-69 (Stewart, J., dissenting).

<sup>89</sup> *Id.* "[I]t is evident to me that Congress made punishable only knowing violations of the regulation in question. That is what the law quite clearly says, what the federal courts have held, and what the legislative history confirms." *Id.* at 565 (Stewart, J., dissenting).

<sup>90</sup> *Id.* at 566 (Stewart, J., dissenting). "[T]he words 'knowingly violates any such regulation' mean no more and no less than 'knowingly violates any such regulation.'" *Id.* (Stewart, J., dissenting) (citations omitted). "[I]t would seem that a person could not knowingly violate a regulation unless he knows of the terms of the regulation and knows that what he is doing is contrary to the regulation." *Id.* at 566-67 (Stewart, J., dissenting) (quoting *St. Johnsbury Trucking Co. v. United States*, 220 F.2d 393, 398 (1st Cir. 1955) (Magruder, C.J., concurring)).

<sup>91</sup> *Id.* at 567 (Stewart, J., dissenting). Justice Stewart thought that the Senate clearly stated that the statute required knowledge of the regulations when it stated:

modified,<sup>92</sup> however, but retained the word "knowingly."<sup>93</sup> Thus, Stewart argued, the statute retained the knowledge of the regulations requirement.<sup>94</sup> Justice Stewart stated that the Court granted to the executive branch exactly what Congress refused to grant in 1960.<sup>95</sup> The result is that a person who had never heard of the regulation might make a single shipment and be guilty of a criminal offense punishable by a year in prison.<sup>96</sup>

In contrast to the *International Minerals* court, the Court of Appeals for the Third Circuit decided in *United States v. Johnson & Towers, Inc.*,<sup>97</sup> that the knowledge requirement in the Resource Conservation and Recovery Act (RCRA)<sup>98</sup> required both knowledge

Prosecution for violations of the Commission's transportation of explosives regulations has been extremely difficult because of the requirement in section 835 of the act that *violators must have knowledge that they violated the Commission's regulations*. While the committee believes that every reasonable precaution should be taken to provide for punishing those violating a statute whose purpose is to promote safety, the creation of an absolute liability is deemed too stringent.

*Id.* (Stewart, J., dissenting) (quoting S. REP. NO. 901, 86th Cong., 1st Sess. 2-3 (1960)) (emphasis added).

<sup>92</sup> See *supra* notes 82-84 and accompanying text.

<sup>93</sup> *International Minerals*, 402 U.S. at 568 (Stewart, J., dissenting).

<sup>94</sup> *Id.* (Stewart, J., dissenting). The House summarized the status of the statute as follows:

The present Transportation and Explosives Act requires that a violation "knowingly" be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a "knowing" violation. The instant bill would change substantially the quantum of proof necessary to prove a violation since it provides that "any person who being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles" is guilty if there is a noncompliance with the regulations. Such language may well create an almost absolute liability for violation. . . . Since the penalties prescribed for violation of the Explosives Act are substantial and since proof required to sustain a charge of violation of such regulations under the bill would require little more than proof that the violation occurred, it is the considered opinion of the committee that such a substantial departure in present law is not warranted. *It is the purpose of this amendment to retain the present law* by providing that a person must "knowingly" violate the regulations.

*Id.* (Stewart, J., dissenting) (quoting H.R. REP., *supra* note 82, at 2-3) (emphasis added).

<sup>95</sup> *Id.* (Stewart, J., dissenting). "I cannot join the Court in this exercise, requiring as it does such a total disregard of plain statutory language, established judicial precedent, and explicit legislative history." *Id.* (Stewart, J., dissenting).

<sup>96</sup> *Id.* at 569 (Stewart, J., dissenting).

<sup>97</sup> 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985).

<sup>98</sup> 42 U.S.C. §§ 6901-6992(k) (1988) [hereinafter RCRA]. Before 1984, § 6928(d) provided: Any person who —

...  
(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter either —

(A) without having obtained a permit under section 6925 of this title . . . or

(B) in knowing violation of any material condition or requirement of such permit

of the regulation and knowledge that the regulation had been violated.<sup>99</sup> The defendants in *Johnson & Towers* were charged with violating RCRA by pumping hazardous wastes into a trench that flowed into a creek.<sup>100</sup> Under RCRA, the company was required to obtain a permit for such disposal.<sup>101</sup> Johnson & Towers, however, had neither applied for, nor been issued, such a permit.<sup>102</sup> The court concluded that for a conviction, the jury must determine that each defendant knew that a permit was required and knew that the company did not have a permit.<sup>103</sup> The court came to this conclusion by analyzing the statutory language and noting that, unlike the statute in *International Minerals*, RCRA contains a "knowingly" requirement both at the beginning and at the end of the statute.<sup>104</sup>

The only Supreme Court case during the last decade dealing with the knowledge and intent issue of criminal statutes is *Liparota v. United States*.<sup>105</sup> In *Liparota*, the defendant was charged with violating a federal statute governing food stamp fraud.<sup>106</sup> The case focused on whether it was necessary to prove that the defendant had knowledge that he was violating the statute.<sup>107</sup> Based on the express language of the statute requiring knowledge,<sup>108</sup> and on the reality that food stamps were not dangerous substances that needed regulation in the same manner as hand grenades or adulterated drugs, the Court found that knowledge of the statute was required for a conviction under it.<sup>109</sup>

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. . . shall, upon conviction, be subject to a fine of not more than \$25,000 . . . for each day of violation, or to imprisonment not to exceed one year . . . , or both . . . .

*Id.* § 6928(d). In 1984 some minor changes were made to the wording of these provisions, and the penalties were increased to \$50,000 for each day of violation or two years of imprisonment or both. *Id.* § 6928.

<sup>99</sup> *Johnson & Towers*, 741 F.2d at 669.

<sup>100</sup> *Id.* at 664.

<sup>101</sup> *Id.*; see also RCRA, 42 U.S.C. § 6925.

<sup>102</sup> *Johnson & Towers*, 741 F.2d at 664.

<sup>103</sup> *Id.* at 669.

<sup>104</sup> See *id.* at 668-69; see also RCRA, 42 U.S.C. § 6928(d). The legislative history of this section of RCRA lends support to the court's conclusion. The House stated that "[t]he use of criminal penalties are sufficiently narrow" because "they only apply to those who knowingly transport hazardous waste to a facility which does not have a permit." H.R. REP. NO. 1491, 94th Cong., 2d Sess. 31 (1976).

<sup>105</sup> 471 U.S. 419 (1985).

<sup>106</sup> *Id.* at 420-21; The Food Stamp Act of 1977, 7 U.S.C. §§ 2011-2030 (1988).

<sup>107</sup> *Liparota*, 471 U.S. at 421.

<sup>108</sup> The Food Stamp Act of 1977 provides, in relevant part, that: "[W]hoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons or authorization cards are of a value of \$100 or more, be guilty of a felony . . . ." 7 U.S.C. § 2024(b)(1).

<sup>109</sup> *Liparota*, 471 U.S. at 433.

The Court justified its interpretation of "knowingly" by stating that when the congressional purpose of a statute is unclear, it should be resolved in the way most favorable to the defendant.<sup>110</sup> The Court stated, however, that the prosecution need prove neither actual knowledge of specific regulations nor the defendant's state of mind.<sup>111</sup> Instead, the defendant's knowledge that his conduct was unauthorized or illegal may be inferred from the facts and circumstances surrounding the case.<sup>112</sup>

The Court of Appeals for the Eleventh Circuit reached a similar decision in *United States v. Hayes International Corp.*<sup>113</sup> In *Hayes*, the defendants were convicted of violating RCRA<sup>114</sup> by shipping hazardous waste to a non-permitted facility.<sup>115</sup> The court determined that the knowledge requirement applied to the permit status of the facility, as well as to the material being transported.<sup>116</sup> The court ruled that not applying the knowledge requirement to this element might criminalize innocent conduct.<sup>117</sup> It further stated that, if Congress had intended such a strict statute, Congress could have dropped the requirement that the defendant knowingly violate the statute.<sup>118</sup> As in *Liparota*, however, the *Hayes* court held that the burden of proving knowledge was minimal and could be accomplished with circumstantial evidence.<sup>119</sup>

In interpreting statutes without a scienter requirement, courts must determine if the statutes are public welfare statutes and therefore do not violate the due process clause. Statutes that do contain a scienter requirement, however, require courts to decide exactly what type of knowledge needs to be proven. Thus far, courts have not imposed very high burdens to satisfy their standards for proving knowledge.

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<sup>110</sup> See *id.* at 427. The Court also stated: "[B]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity." *Id.* (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971)).

<sup>111</sup> *Id.* at 434.

<sup>112</sup> *Id.*

<sup>113</sup> 786 F.2d 1499 (11th Cir. 1986).

<sup>114</sup> 42 U.S.C. §§ 6901-6992(k). Section 6928(d)(1) provides criminal sanctions for: "Any person who —

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter . . . ."  
*Id.* § 6928(d)(1).

<sup>115</sup> *Hayes*, 786 F.2d at 1501.

<sup>116</sup> *Id.* at 1504.

<sup>117</sup> *Id.* The court gave as an example a defendant who reasonably might believe that a site had a permit, but in fact had been misled by the people at the site. *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

#### IV. PUBLIC WELFARE STATUTES AND CORPORATE OFFICER LIABILITY

##### *A. Application of Strict-Liability Public Welfare Statutes to Corporate Officers*

Although public welfare statutes have been in existence since the early part of the twentieth century, application of these statutes to high-level corporate officers is a relatively new phenomenon. *United States v. Park*,<sup>120</sup> decided after *Dotterweich*, established the responsibility of corporate officers for violations of strict-liability public welfare statutes. *Park* involved a violation of the Federal Food, Drug, and Cosmetic Act<sup>121</sup> by Acme Markets, a national retail food chain.<sup>122</sup> The chain employed about thirty-six thousand employees and had 874 retail outlets, twelve general warehouses, and four special warehouses.<sup>123</sup> The corporate headquarters, including the office of the defendant, who was the president and chief executive officer of the corporation, were located in Philadelphia. The corporation and the defendant were charged with allowing food that was received via interstate commerce and held for sale in a Baltimore warehouse, to be stored in a building accessible to, and contaminated by, rodents.<sup>124</sup>

The president of Acme had been notified by the Food and Drug Administration (FDA) of the unsanitary conditions at the Baltimore warehouse after a twelve-day inspection.<sup>125</sup> Several months later, however, a second inspection was conducted, and the FDA found that the situation had not been rectified completely.<sup>126</sup> Furthermore, the president admitted at trial that he had delegated authority over the situation to his subordinates, but that he was responsible for all of the operations of the company.<sup>127</sup> The Court summarized the long

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<sup>120</sup> 421 U.S. 658 (1975).

<sup>121</sup> 21 U.S.C. §§ 301-393. The Federal Food, Drug, and Cosmetic Act prohibits:

The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

*Id.* § 331(k).

<sup>122</sup> *Park*, 421 U.S. at 660.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 661-62.

<sup>126</sup> *Id.* at 662.

<sup>127</sup> *Id.* at 664-65.

history of public welfare statute cases and stated that responsible corporate officers may be held criminally accountable.<sup>128</sup> The Court held that those corporate officers who are in the requisite positions of responsibility have "a positive duty to seek out and remedy violations when they occur,"<sup>129</sup> as well as "a duty to implement measures that will insure that violations will not occur."<sup>130</sup>

The *Park* Court stated that, while defendants can claim that they were powerless to prevent or correct a violation, defendants carry the burden of proving their powerlessness.<sup>131</sup> The government, however, still carries the burden of proving beyond a reasonable doubt that a defendant had the requisite power and position to prevent or correct the violation.<sup>132</sup> The *Park* Court held that corporate officers are accountable because of the responsibilities and authority of their positions, and not merely because of the title of their positions.<sup>133</sup> It is their responsibilities and authority that are the determinative factors in delineating officer liability.<sup>134</sup>

A similar case was decided one year after *Park* in *United States v. Starr*.<sup>135</sup> Cheney Brothers Food Corporation and its secretary-treasurer, Dean Starr, were charged with violating the Federal Food, Drug, and Cosmetic Act<sup>136</sup> after food stored in a company warehouse became contaminated.<sup>137</sup> Starr was responsible for the operation of the warehouse.<sup>138</sup> Although Starr told the warehouse janitor to repair the situation, Starr never inspected to see that the janitor had actually repaired the situation.<sup>139</sup> An entire month later, the FDA conducted a second inspection, and the janitor had not

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<sup>128</sup> See *id.* at 670-73.

<sup>129</sup> *Id.* at 672.

<sup>130</sup> *Id.* The Court also stated that "[t]he accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities." *Id.* at 671 (quoting *Morrisette v. United States*, 342 U.S. 246, 256 (1952)). In support of the high standards that it was setting, the Court stated that, although the requirements of foresight and vigilance imposed on responsible corporate officers are demanding, they are no more strict than the public has a right to expect. *Id.* at 672. These corporate officers voluntarily assume their positions in businesses whose services and products affect the health and well-being of the general public. *Id.*

<sup>131</sup> *Id.* at 673.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 675.

<sup>134</sup> See *id.*

<sup>135</sup> 535 F.2d 512 (9th Cir. 1976).

<sup>136</sup> 21 U.S.C. §§ 301-393; see *supra* note 121.

<sup>137</sup> *Starr*, 535 F.2d at 514.

<sup>138</sup> *Id.* at 514-15.

<sup>139</sup> *Id.* at 515-16.



corrected the situation.<sup>140</sup> The court found Starr liable because he had ample time between inspections to cure the violative conditions that existed.<sup>141</sup>

*B. Application of Environmental Public Welfare Statutes with  
Scienter Requirements to Corporate Officers*

Four recent cases have resulted in the conviction of corporate officers for violating environmental public welfare statutes containing a knowledge requirement. These cases show that corporate officers will be held liable when they participate in or have knowledge of environmental statute violations. In *United States v. Frezzo Bros.*,<sup>142</sup> the Court of Appeals for the Third Circuit affirmed the convictions of two individuals, Guido and James Frezzo, for violating the Federal Water Pollution Control Act.<sup>143</sup> The Act prohibited the willful or negligent discharge of pollutants.<sup>144</sup> Each individual defendant received a thirty-day jail sentence, and their combined fines totaled fifty thousand dollars.<sup>145</sup> The Frezzos' corporation, a mushroom-farming business, produced a manure compost to help grow mushrooms. Water runoff from compost wharves was collected and stored in a holding tank that, when it rained, often overflowed into a separate storm water runoff system that carried rain water to a tributary of a creek.<sup>146</sup>

The evidence showed that the brothers knew that the holding tank could contain the water only ninety-five percent of the time.<sup>147</sup> The court stated that a jury could infer from the totality of the circumstances that a willful act had occurred.<sup>148</sup> The court added that it was not necessary to show that some action was taken, such as the opening of a valve, to establish a willful violation of the Act.<sup>149</sup>

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<sup>140</sup> *Id.* at 514.

<sup>141</sup> *Id.* at 515-16.

<sup>142</sup> 602 F.2d 1123, 1124 (3d Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).

<sup>143</sup> 33 U.S.C. §§ 1251-1387 (1988).

Section 1311(a) provides: "Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful." *Id.* § 1311(a). Before 1987, § 1319(c) provided: "(1) Any person who willfully or negligently violates section 1311 . . . of this title . . . shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both . . ." *Id.* § 1319(c). This section was amended in 1987, and the word "willfully" was deleted. *Id.* § 1319.

<sup>144</sup> *Id.* §§ 1311(a), 1319(c).

<sup>145</sup> *Frezza Bros.*, 602 F.2d at 1124.

<sup>146</sup> *Id.* at 1125.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 1129.

<sup>149</sup> *Id.*

Similarly, in *United States v. Ward*<sup>150</sup> the defendant, the chairman of the board of Ward Transformer Company, was convicted of a "willful" violation under the Toxic Substances Control Act<sup>151</sup> for unlawfully disposing toxic substances<sup>152</sup> and for aiding and abetting the unlawful disposal of toxic substances.<sup>153</sup> The defendant was convicted because of the corporation's scheme to dispose of oil laced with polychlorinated biphenyl by spraying it on the ground.<sup>154</sup> Although Ward himself did not perform the acts of disposing the oil,<sup>155</sup> he approved the plan and suggested dump sites.<sup>156</sup> Furthermore, Ward's employees assisted in carrying out the illegal acts,<sup>157</sup> and Ward's company performed all the work on a truck designed to dump the oil.<sup>158</sup> Ward was advised daily on the progress of the oil disposal until all of the oil was removed from his plant. Given those facts, the Court of Appeals for the Fourth Circuit concluded that there was sufficient evidence for a jury to infer that Ward was an active participant in the illegal disposal of the oil.<sup>159</sup>

Another corporate officer was convicted for violating an environmental statute in *United States v. Greer*.<sup>160</sup> The operator of a waste-recycling and transportation business was charged with illegally dumping hazardous waste<sup>161</sup> in violation of RCRA,<sup>162</sup> as well as failure to report the dumping<sup>163</sup> in violation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).<sup>164</sup> In connection with its waste-recycling and transportation

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<sup>150</sup> 676 F.2d 94 (4th Cir. 1982).

<sup>151</sup> 15 U.S.C. §§ 2601-2671 (1988).

<sup>152</sup> See *id.* §§ 2605, 2614.

<sup>153</sup> See Title 18 of the United States Code, which provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2 (1988).

<sup>154</sup> *Ward*, 676 F.2d at 95.

<sup>155</sup> See *id.* at 95-96.

<sup>156</sup> See *id.* at 95.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 96.

<sup>159</sup> *Id.* at 97.

<sup>160</sup> 850 F.2d 1447 (11th Cir. 1988).

<sup>161</sup> *Id.* at 1448.

<sup>162</sup> 42 U.S.C. § 6928(d)(2)(A); see *supra* note 98 and accompanying text.

<sup>163</sup> *Greer*, 850 F.2d at 1448.

<sup>164</sup> 42 U.S.C. §§ 9601-9675 (1988). CERCLA provides that:

[a]ny person— . . .

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 9602 of this title who fails to notify immediately the appropriate

business at one location, Greer's company also stored and recycled wastes at a second location.<sup>165</sup> Greer himself was involved actively in the daily operation at the second location and supervised the employees who worked there.

Greer's plant manager occasionally dumped wastes directly onto the ground in order to keep the number of drums of waste below 1300, in accordance with a local ordinance.<sup>166</sup> According to the plant manager, Greer approved of this and expressly stated, "[W]ell, we got to keep this drum count down."<sup>167</sup> Another employee testified that she once overheard Greer tell employees that "a rainy day is a good day to get your drum count down."<sup>168</sup> Although there was no evidence that Greer directly told anyone to dump the waste, the court concluded that a jury could infer from the evidence that Greer had knowingly disposed of, or caused others to dispose of, the hazardous waste.<sup>169</sup>

In another case, a court held mid-level managers liable for violating a statute with a knowledge requirement. In *United States v. Johnson & Towers*,<sup>170</sup> the Court of Appeals for the Third Circuit decided that mid-level managers could be held criminally liable for violating RCRA.<sup>171</sup> These individual employees supervised and directed the treatment, storage, and disposal of hazardous wastes.<sup>172</sup>

The *Johnson & Towers* court concluded that under RCRA, employees, as well as owners or operators of the facility, could be held responsible if they "knew or should have known" that there had not been compliance with RCRA's permit requirement.<sup>173</sup> The court stated that the effectiveness of the statute would be severely limited if only owners and operators could be held responsible when others, such as employees, also have substantial responsibility for handling regulated materials.<sup>174</sup> The court summarized its holding by stating

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agency of the United States Government as soon as he has knowledge of such release . . . shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years . . . or both . . .

*Id.* § 9603(b)(3).

<sup>165</sup> *Greer*, 850 F.2d at 1451.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 1452.

<sup>170</sup> 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985); *see supra* notes 97-104 and accompanying text.

<sup>171</sup> *Id.* at 665; *see* RCRA, 42 U.S.C. § 6928(d).

<sup>172</sup> *Johnson & Towers*, 741 F.2d at 664.

<sup>173</sup> *Id.* at 664-65.

<sup>174</sup> *Id.* at 667.

that any knowledge, including knowledge of the permit requirement, "may be inferred by the jury as to those individuals who hold the requisite responsible positions with the corporate defendant."<sup>175</sup>

#### V. THE UNLIKELIHOOD THAT HIGH-LEVEL OFFICERS IN LARGE CORPORATIONS WILL BE CONVICTED FOR ENVIRONMENTAL CRIMES WITHOUT ACTUAL KNOWLEDGE

The Supreme Court's decision in *United States v. Park*<sup>176</sup> makes it clear that corporate officers will be held liable for environmental crimes when they are in positions to prevent or correct violations of strict-liability statutes and fail to do so.<sup>177</sup> Thus, under *Park*, corporate officers may be held criminally liable without actual knowledge of such violations. It seems doubtful, however, that this potential liability will reach high-level officers in large corporations who have no knowledge of any violations of environmental public welfare statutes that include knowledge requirements.<sup>178</sup> To convict such corporate officers would be a violation of their due process rights<sup>179</sup> because of the explicit requirement in these statutes that knowledge be proven for a conviction.

The cases applying these environmental statutes support this proposition. The corporate officers held criminally liable in *Frezzo Bros.* were the owners of a small family business and were aware of the waste overflow.<sup>180</sup> In *Ward*, the evidence was clear that the defendant corporate officer had been an active participant in the planning and approval of the illegal scheme to dispose of the toxic substance.<sup>181</sup> The corporate officer in *Greer* was actively involved in the operation of the business, and there was substantial evidence that he approved of the illegal dumping of wastes.<sup>182</sup> These cases,

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<sup>175</sup> *Id.* at 670.

<sup>176</sup> 421 U.S. 658 (1975); *see supra* notes 120-34 and accompanying text.

<sup>177</sup> *See Park*, 421 U.S. at 673.

<sup>178</sup> These statutes include the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136(b)(1)-(2) (1988) ("knowingly"); Toxic Substances Control Act, 15 U.S.C. § 2615(b) (1988) ("knowingly or willfully"); Clean Water Act, 33 U.S.C. § 1319(c)(2)-(4) (1988) ("knowingly"); Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d)-(e) (1988) ("knowingly"); Clean Air Act, 42 U.S.C. § 7413(c)(1)-(2) (1988) ("knowingly"); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b) (1988) ("knowledge").

<sup>179</sup> *See supra* notes 29-34 and accompanying text.

<sup>180</sup> *United States v. Frezzo Bros., Inc.*, 602 F.2d 1123, 1125 (3d Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980); *see supra* notes 142-49 and accompanying text.

<sup>181</sup> *United States v. Ward*, 676 F.2d 94, 95-97 (4th Cir. 1982); *see supra* notes 150-59 and accompanying text.

<sup>182</sup> *United States v. Greer*, 850 F.2d 1447, 1451 (11th Cir. 1988); *see supra* notes 160-69 and accompanying text.

therefore, all involve corporate officers who were either actively involved in, or aware of, or in a clear position to be aware of, the violations that occurred.

Nevertheless, there are two cases that could be used to support the proposition that high-level officers in large corporations could be convicted for environmental crimes even if they do not have actual knowledge of the violations. There are strong reasons, however, why these two cases, *United States v. International Minerals & Chemical Corp.*<sup>183</sup> and *United States v. Johnson & Towers*,<sup>184</sup> do not have much impact.

In *International Minerals*,<sup>185</sup> the Supreme Court failed to distinguish a statute with an explicit knowledge requirement as being any different from a strict-liability statute.<sup>186</sup> The Court's decision that the words "knowingly violates any such regulation" referred only to knowledge of facts or the hazardousness of the materials, and not to law or the regulation itself, defied logic and the statutory history. This reading of the statute made it a strict-liability statute except for the extremely rare situation in which someone ships a hazardous substance thinking it is harmless. The Court's interpretation of the statute is unreasonable because while the Court acknowledged that Congress did not want to create strict-liability,<sup>187</sup> the Court's decision effectively imposed a strict-liability standard. Justice Stewart, in his dissent, harshly criticized the majority opinion.<sup>188</sup>

If knowledge of the law is required in this statute, then those who regularly ship hazardous materials will have a difficult time proving that they were unaware of the regulations.<sup>189</sup> It is the person who is unaware of the regulations and may be shipping regulated material for the first and only time who would be protected by the statute if knowledge of law were required.<sup>190</sup> The Court's reluctance to create an ignorance of the law excuse was unfounded because the only people who would be affected are those who have never dealt with such hazardous materials before. It is these people that the statute was designed to protect by the inclusion of the word "knowingly."<sup>191</sup>

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<sup>183</sup> 402 U.S. 558 (1971); see *supra* notes 76-96 and accompanying text.

<sup>184</sup> 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985); see *supra* notes 97-104, 170-75 and accompanying text.

<sup>185</sup> 402 U.S. 558 (1971).

<sup>186</sup> See *supra* notes 88-96 and accompanying text.

<sup>187</sup> *Id.* at 562-63.

<sup>188</sup> See *id.* at 565-69 (Stewart, J., dissenting).

<sup>189</sup> *Id.* at 569 (Stewart, J., dissenting).

<sup>190</sup> *Id.* (Stewart, J., dissenting).

<sup>191</sup> See S. REP. NO. 901, 86th Cong., 1st Sess. 2-3 (1960); H.R. REP. NO. 1975, 86th Cong., 2d Sess. 2 (1960); see also *supra* notes 76-96 and accompanying text.

The decision in *International Minerals* would pose a problem for a corporate officer whose corporation shipped hazardous materials, without the corporate officer's knowledge, in violation of the statute. In such a situation, the corporate officer could be held liable under the responsible corporate officer doctrine discussed in *Park*.<sup>192</sup> Such a corporate officer could be held criminally liable for the statutory violation although the officer had absolutely no knowledge of the events. The statute involved in *International Minerals*, however, is different from most environmental statutes because the Court read it to be virtually a strict-liability statute. In cases since *International Minerals*, courts have not read environmental statutes so narrowly, and no high-level corporate officers have been convicted without knowledge of statutory violations.<sup>193</sup>

The other case that has left a small opening for courts to apply a stricter standard to environmental public welfare statutes with knowledge requirements is *Johnson & Towers*, decided by the Court of Appeals for the Third Circuit.<sup>194</sup> The *Johnson & Towers* court used language describing potential corporate officer liability<sup>195</sup> that is extremely similar to the language used by the Supreme Court in *United States v. Park*.<sup>196</sup> By stating that those who "should have known"<sup>197</sup> based on their "requisite responsible positions"<sup>198</sup> can be prosecuted, the *Johnson & Towers* court's standard approached the responsible corporate officer doctrine that was laid out by the Supreme Court in *Park*.<sup>199</sup> *Park*, however, concerned a strict-liability public welfare statute containing no knowledge requirement. In contrast, the *Johnson & Towers* court applied a similar standard to a statute that the court determined required both knowledge of a permit requirement and knowledge that the requirement had not been met.<sup>200</sup>

When examined closely, however, the *Johnson & Towers* opinion really does not support convictions of corporate officers lacking knowledge, for the violation of statutes containing a knowledge requirement. First, the words "knew or should have known," concerning compliance with the permit requirement, were used by the court

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<sup>192</sup> See *supra* notes 120-34 and accompanying text.

<sup>193</sup> See *supra* notes 113-19, 142-75 and accompanying text.

<sup>194</sup> 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985).

<sup>195</sup> *Id.* at 665, 670.

<sup>196</sup> 421 U.S. 658, 673 (1975).

<sup>197</sup> *Johnson & Towers*, 741 F.2d at 665.

<sup>198</sup> *Id.* at 670.

<sup>199</sup> See *supra* notes 128-34 and accompanying text.

<sup>200</sup> See *supra* notes 170-75 and accompanying text.

when it discussed the potential liability for employees who "knowingly treat, store, or dispose of any hazardous waste."<sup>201</sup> Second, it is not unusual to allow a jury to infer the elements of a crime, so that allowing the jury to infer knowledge based on a person's "requisite responsible position" is not wrong. The jury may infer knowledge from many factors that comprise circumstantial evidence.<sup>202</sup> Third, the defendants in *Johnson & Towers* were not high-level corporate officers but were mid-level managers who were directly involved with the treatment, storage, and disposal of hazardous wastes.<sup>203</sup>

The *Park* Court dealt specifically with corporate officer liability and imposed the "highest standard of foresight and vigilance" on corporate officers.<sup>204</sup> To read the *Johnson & Towers* opinion so broadly would be inaccurate and unjustified considering the facts of the case and that this was a circuit court opinion that has not resulted in the conviction of high-level corporate officers for environmental crimes of which they had no knowledge.

High-level corporate officers in large corporations usually are not involved with the daily operations of the corporation's divisions, offices, factories, and warehouses. They may set corporate policy regarding these operations, but it is unrealistic to expect them to have actual knowledge of daily events. These officers can be convicted of environmental crimes requiring proof of knowledge, however, if juries find that the officers knew about statutory violations or shut their eyes to the violations. Jurors can infer such knowledge based on the surrounding circumstances.

If high-level corporate officers do not have any knowledge of the violations that occurred, however, then juries will not convict them for violating statutes that require proof of knowledge because that would violate their due process rights. The responsible corporate officer doctrine discussed by the Supreme Court in *Park* cannot be applied to such officers when the violated statute contains a knowledge requirement. This means that those directly responsible for compliance with environmental statutes will be the ones held accountable. This seems to have been the intent of Congress when it passed these statutes because strict liability was not imposed. While

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<sup>201</sup> *Johnson & Towers*, 741 F.2d at 664-65.

<sup>202</sup> *Liparota v. United States*, 471 U.S. 419, 434 (1985); see *supra* notes 105-12 and accompanying text; see also *United States v. Hayes Int'l Corp.*, 786 F.2d 1499, 1505 (11th Cir. 1986); see *supra* notes 113-19 and accompanying text.

<sup>203</sup> *Johnson & Towers*, 741 F.2d at 664.

<sup>204</sup> *United States v. Park*, 421 U.S. 658, 673 (1975).

this will insulate high-level corporate officers from criminal convictions, it actually should promote compliance with environmental statutes by corporate employees. Those whose job duties involve complying with environmental statutes will be less likely to cut corners if they know that they will be the only ones criminally charged.

## VI. CONCLUSION

Most federal environmental statutes contain knowledge requirements. The corporate officers who have been convicted under these statutes either have been active participants in the violations or have had knowledge of the violations. High-level officers in large corporations have not been convicted under these statutes because, without knowledge of the violations, a criminal conviction would violate their due process rights. Unless these laws are changed, it is unlikely that any high-level corporate officers can be convicted criminally for statutory violations by the corporation's employees. This result should actually decrease the likelihood of environmental statute violations, however, because mid-level managers and employees should know that they, and not their superiors, will be convicted criminally for their wrongful acts.